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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 5th May, 2003:—

BILL No. XXXVI of 2002

A Bill further to amend the Merchant Shipping Act, 1958.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2003.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

44 of 1958.

2. For sections 356 A to 356 H of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), the following sections shall be substituted, namely:—

Substitution
of new
sections for
sections 35A
to 356H.
Applications.

'356A. (1) Save as otherwise provided, this Part shall apply to—

(a) oil tankers of one hundred and fifty tons gross or more, other ships of four hundred tons gross or more and off-shore installations; and

(b) incidents of marine casualty or acts relating to such casualty occurring with grave and imminent danger to Indian coast line or related interest from pollution or threat of pollution in the sea by deliberate, negligent or accidental release of oil, ballast water, noxious liquid and other harmful substances into sea including such incidents occurring on the high seas.

(2) This Part shall not apply to any war ships or other ships owned or operated by the Government and used for the time being on Government non-commercial service.

Definitions.

356B. In this Part, unless the context otherwise requires,—

(a) “ballast” means any solid or liquid placed in a ship to increase the draft to change the trim, to regulate the stability, or to maintain stress load within such limits as may be prescribed;

(b) “cargo” includes ballast and ship’s stores and fuel;

(c) “coasts” has the same meaning assigned to it in section 357;

(d) “coastal waters” means any part of the territorial waters of India, or any marine areas adjacent thereto over which India has, or, may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force;

80 of 1976.

(e) “Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, including its Protocol of 1978, as amended from time to time in the manner specified therein;

(f) “international pollution prevention certificate” means any certificate issued in accordance with the provisions of Pollution Prevention Conventions and Protocols thereto which are acceded to by India;

(g) “mile” means a nautical mile of 1,852 metres;

(h) “noxious liquid substance” means any substance which has been designated as such by rules made under this Part;

(i) “off-shore installation” means an installation, whether mobile or fixed, which is used or is intended to be used for under-water exploration or exploitation of crude oil, petroleum or other similar mineral oils, under lease, licence or any other form of contractual arrangement and includes—

(a) any installation which could be moved from place to place under its own motive power or otherwise; and

(b) a pipe-line;

(j) “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

(k) “oily mixture” means a mixture with any oil content;

(l) “oil tanker” means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes any combination carrier or, any chemical tanker when it is carrying a cargo or part cargo of oil in bulk;

(m) “reception facilities”, in relation to a port, means facilities for enabling tankers or ships using the port to discharge or deposit residue or mixture of any substance subject to control by the Convention;

(n) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

356C. (1) No Indian oil tanker or other Indian ship shall proceed to sea unless there is in force, in respect of that ship, a certificate issued by the Central Government, to be called an international oil pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed.

Issue of
pollution
prevention
certificate.

(2) No Indian oil tanker or other Indian ship carrying noxious liquid substances in bulk shall proceed to sea except with a certificate issued by the Central Government, to be called an international pollution prevention certificate in such form, for such duration and subject to such conditions as may be prescribed, for the carriage of noxious liquid substances in bulk.

(3) No Indian oil tanker or other Indian ship to which Annexure IV of the Convention applies shall proceed to sea except with a certificate issued by the Central Government, to be called an international sewage pollution prevention certificate in such form, for such duration and subject to such conditions as may be prescribed.

Explanation.—For the purposes of this sub-section, “sewage” means—

(i) drainage and other waste from any form of toilets, urinals and water closet scuppers;

(ii) drainage from medical premises (dispensary, sick bay and other like places) via wash basins, wash tubs and scuppers located in such premises;

(iii) drainage from spaces containing living animals; or

(iv) other waste water when mixed with the drainages specified above.

(4) A valid international pollution prevention certificate issued in respect of an oil tanker or a ship, other than an Indian ship, by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as the corresponding certificate issued in respect of an Indian ship has under this Part.

356D. (1) The Central Government may, at the request of the Government of a country to which the Convention applies, cause any international pollution prevention certificate to be issued in accordance with the Convention in respect of an oil tanker or other ship in that country, if it is satisfied that such certificate can properly be issued, and where a certificate is so issued, it shall contain a statement that it has been issued on request.

Issue of certificates for foreign ships in India and Indian ships in foreign countries.

(2) The Central Government may request the Government of a country to which the Convention applies, to issue any international pollution prevention certificate in accordance with the Convention in respect of a ship and the certificate issued in pursuance of such a request containing a statement that it has been so issued shall have the same effect as if it had been issued by the Central Government under this Act.

356E. For the purpose of preventing or reducing discharges of harmful substances or mixtures containing such substances from the oil tankers or other ships, the Central Government may make rules requiring Indian oil tankers and other Indian ships to be fitted with such equipment and to comply with such requirements for construction, survey of equipment and structure of such oil tankers or other ships and specifying conditions for making of surveys of all oil tankers or other ships, as may be prescribed, prior to issuing an international pollution prevention certificate.

Requirement for construction and equipment in ships to prevent pollution.

Explanation.—For the purposes of this section, ‘harmful substance’ means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control by the Convention.

356F. (1) Every Indian oil tanker or other Indian ship which carries a substance subject to control by the Convention shall maintain, as may be required, record books in the prescribed forms, on board the oil tanker or other ship.

Record books.

(2) The manner in which record books shall be maintained, the nature of entries to be made therein, the custody and disposal thereof, and all other matters relating thereto shall be such as may be prescribed having regard to the provisions of the Convention.

Inspection
and control of
oil tankers
and other
ships to which
this Part
applies.

356G. (1) A surveyor or any person authorised in this behalf may go, at any reasonable time, on board an oil tanker or other ship to which any of the provisions of this Part applies, for the purposes of—

(a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;

(b) satisfying himself about the adequacy of the measures taken to prevent pollution;

(c) ascertaining the circumstances relating to an alleged discharge of a substance which is subject to control by the Convention from the oil tanker or other ship in contravention of the provisions of this Part;

(d) inspecting any record required to be maintained on board; and

(e) checking the validity of the international pollution prevention certificate.

(2) The surveyor or any such person may, if necessary, make, without unduly delaying the oil tanker or the other ship, a true copy of any record of the oil tanker or the other ship and may require the master of such tanker or ship to certify the copy to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

Information
regarding
contravention
of provisions
of
Convention.

356H. (1) If, on report from a surveyor or other person authorised to inspect an oil tanker or other ship under section 356G, the Director-General is satisfied that any provision of the Convention has been contravened by such oil tanker or other ship within the coastal waters, the Director-General or any officer authorised by him in this behalf, may—

(a) detain the oil tanker or other ship until the causes of such contravention are removed to the satisfaction of the Director-General or the officer authorised by him; and

(b) proceed against such oil tanker or other ship for recovery of cost of pollution damage, if any, and the cost of prevention of pollution damage and cleaning of such pollution:

Provided that where the Director-General deems it necessary, he may request the Indian Navy or the Coast Guard for preventing the oil tanker or other ship from proceeding to sea, and the Indian Navy or the Coast Guard, as the case may be, shall take action as requested by the Director-General.

(2) On receipt of information from the Government of any country to which the Convention applies that an Indian oil tanker or other ship has contravened any provision of the Convention, the Central Government may, if it deems it necessary so to do, request such Government to furnish further details of the alleged contravention and if satisfied that sufficient evidence is available to establish contravention of any of the provisions of this Part or the rules made thereunder, take appropriate action against the owner or master of the concerned oil tanker or other ship and intimate the reporting Government of the action so taken.

Amendment
of section
356-I.

3. In section 356-I of the principal Act, for the words "oil reception facilities", wherever they occur, the words "reception facilities" shall be substituted.

Amendment
of section
356 J.

4. In section 356 J of the principal Act, for the word "oil", wherever it occurs, the words "oil or noxious liquid substance" shall be substituted.

Amendment
of section
356 K.

5. In section 356 K of the principal Act, for the word "oil", wherever it occurs, the words "oil or noxious liquid substance" shall be substituted.

6. In section 356-O of the principal Act, in sub-section (2),—

Amendment
of section
356-O.

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) prescribe the limits of ballast, and designate noxious liquid substances, under clauses (a) and (h) respectively, of section 356B;

(b) prescribe the forms in which, the duration for which and the conditions subject to which, various international pollution prevention certificates shall be issued under section 356C;

(bb) prescribe the period within which, the manner in which and the conditions for making surveys of oil tankers or other ships prior to issuing an international pollution prevention certificate and the requirements as to equipment which are to be fitted for prevention of pollution by an oil tanker and other ship under section 356E,";

(ii) in clause (c), for the words "oil record books", the words "record books" shall be substituted;

(iii) in clause (d), for the words "oil monitoring system, oily water separator, oil content metre, crude oil washing system, inert gas system or other equipments or contrivances carried out on board for preventing pollution of sea by oil", the words "various equipments required under the Convention" shall be substituted;

(iv) after clause (e), the following clause shall be inserted, namely:—

"(ee) any other matter which, for the implementation of the Convention, has to be or may be prescribed."

STATEMENT OF OBJECTS AND REASONS

The Merchant Shipping Act, 1958 governs matters relating to shipping in India. The main objective of the Act is to ensure development and efficient maintenance of the Indian mercantile marine. The Act has been amended, from time to time in the light of the experience gained in its implementation and also to give effect to the provisions of various International Conventions to which India has acceded.

2. As an active member of the International Maritime Organisation (IMO), India has acceded to a number of International Conventions and Protocols adopted by the IMO. Suitable provisions are required to be made, from time to time, in the Merchant Shipping Act, 1958 to enable the Government of India or its agencies to give effect to those Conventions and Protocols.

3. The International Maritime Organisation adopted in 1973 the International Convention for Prevention of Pollution from Ships, 1973 (MARPOL 1973) which was amended by adoption of Protocol in 1978. The MARPOL 1973 and Protocol of 1978 thereto, together known as MARPOL 73/78 seeks to achieve complete elimination of pollution of the marine environment by oil and other harmful substances and minimization of accidental discharge of such substances by prescribing a package of requirements of design, construction, survey and certification norms with respect to discharge of sewage and garbage into the sea.

4. The Bill seeks to amend sections 356A, 356B, 356C, 356D, 356E, 356F, 356G, 356H, 356I, 356J, 356K and 356O of Part XIA of the Act which is considered necessary following India's accession to Annexes III, IV and V of MARPOL 73/78 and to enable maritime administration to enforce the provisions of MARPOL 73/78.

5. The Bill seeks to achieve the above objects.

SHATRUGHAN SINHA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill, *inter alia*, empowers the Central Government to prescribe the limits of ballast under clause (a) and designate noxious liquid substances under clause (h) of section 356B. This clause also empowers the Central Government to prescribe forms in which, the duration for which and the conditions subject to which the international oil pollution certificate, international pollution prevention certificate and international sewage pollution prevention certificate required to be issued under sub-sections (1), (2) and (3), respectively, of section 356C and to make rules for issue of a valid international pollution prevention certificate in respect of an oil tanker or a ship, other than an Indian ship, by the Government of the country to which the ship belongs, to have the same effect in India as the corresponding certificate issued in respect of an Indian ship has under Part XIA, under sub-section (4) of that section. It also empowers the Central Government to make rules for the purpose of preventing or reducing discharges of harmful substances or mixtures containing such substances from the oil tankers or other ships requiring Indian oil tankers and other Indian ships to be fitted with such equipment and to comply with such requirements for construction, survey of equipment and structure of such oil tankers or other ships, specify the conditions for making of survey of all oil tankers or other ships prior to issuing international pollution prevention certificate and the period within which, the manner in which and the conditions for making survey of oil tankers or other ships prior to issuing international pollution prevention certificate and the requirements as to equipments which are to be fitted for prevention of pollution by oil tankers and other ships under section 356E. It also empowers the Central Government to prescribe the forms for maintenance of record books on board the oil tankers or other ships under sub-section (1) and to prescribe the manner in which the record books shall be maintained, the nature of entries to be made therein, the custody and disposal thereof and all other matters relating thereto under sub-section (2) of section 356F.

2. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for all matters in the Bill. The delegation of legislative power is, therefore, of a normal character.

YOGENDRA NARAIN,
Secretary-General.